i

Supreme Court, U.S.
FILED
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No.

In the Supreme Court of the United States

Paul Trunnell
PETITIONER,
v.
Summit County, RESPONDENT.

On Petition for a Writ of Certiorari to the Utah State Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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In May of 2001, Utah's Summit County sold Petitioner's real and private property at a tax sale, pursuant to vague and ambiguous statutory guidelines. Summit County violated Petitioner's Constitutional rights by (1) unilaterally changing the previously announced sale date, (2) by failing to provide Petitioner adequate notice of the new—earlier—sale date, (3) conducting the sale while knowing that second parties of interest (mortgagee, *inter alia*) did not receive actual notice, and (4) breaching an agreement made by the Summit County Auditor to allow Petitioner additional time to redeem his property.

Question presented:

By failing to abide by the legal promise that taking property must be by strictissimi juris, by failing to comply with statutory requirements to provide proper notice, and by refusing to honor a promise made by a county officer with apparent authority to make that promise, are Summit County's acts in selling Petitioner's property at a tax sale for pennies on the dollar repugnant to the rights of due process and equal protection under the laws as provided in the fourteenth amendment to the United States Constitution, as it applies to every property owner across the country?

QUESTION PRESENTED: I

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The July 19, 2004 denial of certiorari by the Utah Supreme Court is reported at 94 P.3d 929 (**App., 1a-2a**). The opinion of the Utah Court of Appeals (**App., 3a-13a**) is unreported. The Order on Motions for Summary Judgment and Judgment of the Utah Third District Court (**App., 13a-19a**) is unreported.

JURISDICTION

Utah Court of Appeals entered judgment on March 4, 2004. Petitioner filed a timely petition for a writ of certiorari in the Utah Supreme Court, which that Court denied on July 19, 2004. The jurisdiction of this Court rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment XIV:
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Code§ 59-2-1351.
Sales by county -- Notice of tax sale -- Entries on record.
(1) (a) Upon receiving the tax sale listing from the county treasurer, the county auditor shall select a date for the tax sale

for all real property on which a delinquency exists that was not previously redeemed and upon which the period of redemption is expiring in the nearest tax sale.

(b) The tax sale shall be conducted in May or June of the current year.

(2) Notice of the tax sale shall be provided as follows:

(a) sent by certified and first class mail to the last-known recorded owner, the occupant of any improved property, and all other interests of record, as of the preceding March 15, at their last-known address; and

(b) published four times in a newspaper published and having general circulation in the county, once in each of four successive weeks immediately preceding the date of sale; or

(c) if no newspaper is published in the county, posted in five public places in the county, as determined by the auditor, at least 25 but no more than 30 days prior to the date of sale.

(3) The notice shall be in substantially the following form:

NOTICE OF TAX SALE

Notice is hereby given that on _____(month\day\year), at __ o'clock __. m., at the front door of the county courthouse in ____ County, Utah, I will offer for sale at public auction and sell to the highest bidder for cash, under the provisions of Section 59-2-1351.1, the following described real property located in the county and now delinquent and subject to tax sale. A bid for less than the total amount of taxes, interest, penalty, and administrative costs which are a charge upon the real estate will not be accepted.

(Here describe the real estate)

IN WITNESS WHEREOF I have hereunto set my hand and official seal on _____(month\day\year).

_____

County Auditor

_____

County

(4) (a) The notice sent by certified mail in accordance with Subsection (2)(a) shall include:

(i) the name and last-known address of the last-known recorded owner of the property to be sold;

(ii) the parcel, serial, or account number of the delinquent property; and

(iii) the legal description of the delinquent property.

(b) The notice published in a newspaper in accordance with Subsection (2)(b) shall include:

(i) the name and last-known address of the last-known recorded owner of each parcel of property to be sold; and

(ii) the street address or the parcel, serial, or account number of the delinquent parcels.

STATEMENT OF THE CASE

Petitioner brought suit in the Utah Third Judicial District against Summit County alleging, *inter alia*, the violation of constitutional right to due process (Utah Court of Appeals, Appellant's Opening Brief, 22). The court granted Respondent's motion for summary judgment. Petitioner timely appealed to the Utah Court of Appeals, again arguing due process violations. The Utah Court of Appeals affirmed the district court. Petitioner timely filed a petition for a writ of cert to the Utah Supreme Court, again alleging violation of

Petitioner's right to due process. The Utah Supreme Court denied the petition.

Petitioner, having received notice that this property would be sold at a tax sale on May 31, 2001, was preparing to redeem his property prior to the May 31, 2001 date of the tax sale. Summit County unilaterally changed the date of the sale to May 24, 2001.

Material facts surrounding this sale are:

1. January 23, 2001 Summit County sent notice to Petitioner regarding delinquent taxes and notifying Petitioner that the sale would be held on May 31, 2001 at the Summit County Courthouse (Utah Court of Appeals, Appellant's Addendum Exhibit H).
2. In April, 2001 Summit County Auditor, Blake Frazier changed the date of the sale to May 24, 2001 so that some county employees could attend a conference (Utah Court of Appeals, Appellant's Opening Brief, 11).
3. On April 30, 2004 Summit County sent another notice of tax sale, showing the new date but otherwise not calling attention to the change of dates. This notice was not mailed to Petitioner at his last address of record as required by Utah Code § 59-2-1351 and was returned by the Postal Service marked "return to sender."
4. On May 15, 2001 Petitioner called and spoke to Summit County Auditor, Blake Frazier. Upon asking if there was a way to defer the tax sale so that Petitioner could raise the money to redeem the property. Auditor Frazier said that Petitioner could pay $2,000 by mail and the remainder within 30 days. (June 14, 2001). Auditor Frazier did not set a deadline for the initial payment.
5. On May 15, 2001, Petitioner mailed a $2,000 check, unfortunately without sufficient postage on the envelope (Petitioner repeated this accident on at least

one other bill mailed the same day (Utah Court of Appeals, Appellant's Addendum Exhibit K)).

6. On May 24, 2001, and without further notice to Petitioner, his property was sold by the County for $31,000.

Summit County changed the date of the tax sale effectively denying Petitioner his right to redeem the property prior to its sale.

When Summit County sent Petitioner the January notice stating that the sale would be held on May 31, 2001 at the Summit County courthouse, it met the notice requirements of Due Process. When it later changed the date of the tax sale, it also took on a due process burden to give notice to all interested parties of the *changed date.*

In failing to use due diligence to satisfy the County's responsibility to provide notice of the change, it violated Petitioner's right to due process and equal protection of the laws.

There is no record of actual notice to Petitioner of the May 24, 2001 sale

On January 23, 2001, the Summit County Treasurer sent a Delinquent Tax Billing statement to Petitioner notifying him of a tax delinquency in the total amount of six thousand sixty-five dollars and forty-nine cents ($6,065.49). Contained within the Delinquent Tax Billing statement was the following statement:

> In accordance with Utah Code 59-2-1343 to 59-2-1351, after March 15, 2001 your property will be sold at public auction for non-payment of taxes. This sale will be held at the Summit County Courthouse on May 31, 2001.

(Utah Court of Appeals, Appellant's Addendum Exhibit H). It is undisputed that this notice was mailed to Petitioner, and that he received it. The notice is specific as to date and place

of sale leading a reasonable person to believe that the sale would be held on that day and at that place.

Sometime in April 2001, Summit County decided to hold the sale on May 24, 2001, a week *before* the date shown on the previous notice. Summit County claims that it mailed a newer notice, with the expedited date, to Petitioner on April 30, 2001. Evidence shows that a notice was sent first to an old address (not the address of record, as required by statute) and returned as undeliverable. Notice was later sent to Petitioner's then-current address by certified mail, but the undated return receipt does not show that Petitioner received the notice,[1] nor *whether it was delivered before the actual sale date.*

Since Summit County cannot prove personal service the question turns to the duty owed to Petitioner by Summit County regarding due process. This Court has said:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652 (1950).

Can Summit County's actions be said to be reasonably calculated, under all the circumstances, to apprise Petitioner and other interested parties notice of the pendency of the sale? They cannot, and thus are violations of Petitioner's right to due process.

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[1] It was signed for by Petitioner's wife out of state and allegedly not opened (App. Utah Court of Appeals, Appellant's Addendum Exhibit I).

The records show that other parties of interest did not receive notice and the County exercised no diligence in giving these parties notice

In addition to their failure to effect personal service on Petitioner, Summit County failed to provide actual notice to other parties of interest to the property, who would have redeemed it, and also failed to exercise any diligence in trying to provide the statutorily-required notice.

Summit County's lone attempt to give notice to the private mortgagee was a letter sent to an old post office box and returned to Summit County (Utah Court of Appeals, Appellant's Addendum Exhibit I). Another party of interest, Old Republic Title Company, was likewise mailed a notice and it was likewise returned to Summit County. Old Republic Title Company is a large Utah title company and even the most desultory inquiry would have turned up their address in Provo, Utah.

Finally, and perhaps most egregiously, Petitioner called the Summit County Assessor and made an arrangement to redeem the property by mailing $2,000 and paying the balance within thirty days. Petitioner wrote the $2,000 check and mailed it, but with inadequate postage. Unaware of the postage problem, Petitioner called the Summit County Assessor on May 21, 2001 to see if the Auditor had received Petitioner's check. Petitioner left a voice message questioning the receipt of the check and said he was arranging financing to redeem the property in full before the 30-day deadline.[2] The Summit County Assessor

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[2] Summit County Auditor, Blake Frazier, admits both the calls and the agreement, but disputably states that the arrival of the checks was a condition precedent. The County then argued that Frazier, who regularly used this informal, non-mandated policy, was without authority to do so. Since this case was decided on summary judgment, Petitioner states the facts in a light most consistent with his opposition. "On summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party

d not return Petitioner's call or make any effort to inform m that his property was being sold in three days.

The district court and the Utah Court of Appeals und that putting the check in the mail with a one cent stamp d not constitute mailing, and, therefore, Petitioner did not erform. The courts below did not address such issues as der or time of performance, nor whether it was reasonable r Petitioner to believe that he had a bargain that had taken s property off the tax sale list for thirty days, nor the onstitutional issues raised.

This Court has frequently held that notice is dispensable to due process: "Our cases have required the ate to make efforts to provide actual notice to all interested rties comparable to the efforts that were previously quired only in in personam actions." *Mennonite Bd. of issions v. Adams*, 462 U.S. 791, 796, n.3., 103 S.Ct. 2706 983), yet Summit County failed on several fronts in its ckadaisical efforts to provide notice to parties on interest in is case.

EASONS FOR GRANTING THE PETITION

. "The touchstone of due process is protection of the individual against arbitrary action of government[.]" *Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S.Ct. 2963, 2976 (1974) quoting *Dent v. West Virginia*, 129 U.S. 114, 123, 9 S.Ct. 231, 233, 32 L.Ed. 623 (1889) Here, a County official arbitrarily changed the date of the tax sale, and in doing so abrogated previous notices of the pending sale, which Petitioner was relying on. The County then failed to provide adequate notice to the parties of interest, as they are required to do by statute. The County says that all that is required is to *mail* notice, it is not required to use any diligence to see that notice is *actually received*. This

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posing the motion." *U.S. v. Diebold, Inc.* 369 U.S. 654, 655, 82 S.Ct. 3, 994 (1962) *per curiam.*

position is contrary to previous Supreme Court rulings. "Our cases have required the State to make efforts to provide actual notice to all interested parties comparable to the efforts that were previously required only in in personam actions." *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 796, n.3., 103 S.Ct. 2706 (1983). The standards of how much effort to provide actual notice the government must take are still vague and consideration of this case would be of assistance to courts at all levels of government.

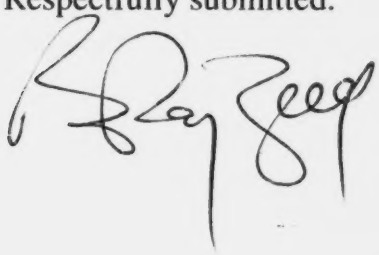
2. The forfeiture of a citizen's real property is among the harshest measures a state can take against a citizen. This is why the government has seen fit to grant the citizen constitutional protection: "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Amendment XIV United States Constitution). These rights are best protected by this Court, which can fix guidelines in the interest of uniformity of states actions. The Court's guidance can further the interests of justice by again addressing the acts necessary to protect the rights of its citizens.

CONCLUSION

Summit County, with no apparent concern for the rights of the Petitioner, and without regard for due process or equal protection, sold the Petitioner's property, valued at $2,000,000, for a mere $31,000.

The petition for a writ of certiorari should be granted.

Respectfully submitted.



IN THE SUPREME COURT OF THE STATE OF UTAH

NOTICE OF DECISION

Paul Trunnell, an individual,

Appellant and Petitioner,

v. 20040353-SC
20020876-CA
010500222

Summit County; Jim Sorensen, an individual;
and Connie Sorensen, an individual,

Appellees and Respondents.

The above-entitled case was submitted to the court for decision and the attached order has been issued.

Order issued: July 19, 2004
Notice of Decision issued: July 21, 2004
Record: None
THIRD DISTRICT, SILVER SUMMIT, # 010500222

S/Pat H. Bartholomew
Clerk of Court

By s/Vera Dolan
Deputy Clerk

7-21-04
Date

IN THE SUPREME COURT OF THE STATE OF UTAH

NOTICE OF DECISION

Paul Trunnell, an individual,

Appellant and Petitioner,

No. 20040353-SC
20020876-CA

v.

Summit County; Jim Sorensen, an individual;
and Connie Sorensen, an individual,

Appellees and Respondents.

ORDER

This matter is before the court upon a Petition for Writ of Certiorari, filed on May 5, 2004.

IT IS HEREBY ORDERED pursuant to Rule 45 of the Utah Rules of Appellate Procedure the Petition for Writ of Certiorari is denied.

For the Court:

Dated July 19, 2004

s/ Christine M. Durham
Chief Justice

IN THE UTAH COURT OF APPEALS
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Paul Trunnell,

Plaintiff and Appellant,

v.

Summit County, James Sorensen, and Connie Sorensen,

Defendants and Appellees.

MEMORANDUM DECISION
(Not For Official Publication)

Case No. 20020876-CA

FILED
(March 4, 2004)

2004 UT App 45

Third District, Silver Summit Department

The Honorable Robert K. Hilder

Attorneys: B. Ray Zoll and S. Dayn Kelson, Murray, for Appellant

David L. Thomas and Jami R. Brackin, Coalville, and Victoria C. Fitlow, Park City, for Appellees

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Before Judges Bench, Davis, and Jackson.

DAVIS, Judge:

Paul Trunnell appeals a trial court order granting Defendants' motions for summary judgment[1] and denying Trunnell's cross-motion for summary judgment. We affirm.

I. Summit County's Motion For Summary Judgment

Trunnell argues that the trial court erred by granting summary judgment in favor of Summit County. Specifically, Trunnell asserts that the trial court erred (A) by ruling that Summit County complied with all of the statutory provisions concerning property tax sales; (B) in its rulings concerning Trunnell's alleged oral agreement with the Summit County Auditor (Auditor); and (C) by determining that a certain five-acre parcel was not a separate parcel.

A. Statutory Compliance

Trunnell argues that Summit County failed in several respects to comply with all of the statutory provisions concerning property tax sales and, therefore, that the trial court erred by ruling that Summit County complied with such provisions.[2] "Tax sales are made exclusively under statutory power, and, unless all the necessary prerequisites of the statute are carried out, the tax sale becomes invalid. If one of the prerequisites fail, it is as fatal as if all failed." Olsen v. Bagley, 10 Utah 492, 37 P. 739, 740 (1894). "When the deed is executed and delivered by the auditor, it shall be prima

facie evidence of the regularity of all proceedings subsequent to the date the taxes initially became delinquent and of the conveyance of the property to the grantee in fee simple." Utah Code Ann. § 59-2-1351.1(9)(b) (2000).

First, Trunnell argues that the signed statements for 1996 did not comply with the applicable statutory provisions and, therefore, that the property tax sale was invalid. See Utah Code Ann. § 59-2-311, -326 (2000). Trunnell asserts that the Summit County Assessor failed to complete the signed statement for the 1996 assessment book by May 22, 1996, as required by statute, because it was completed on May 24, 1996.[3] See id. § 59-2-311. Trunnell also asserts that it is unclear whether the Auditor completed the signed statement for the 1996 assessment roll by November 1, 1996, as required by statute, because, although it was completed, it was not dated. See id. § 59-2-326. Trunnell does not dispute the subject matter, accuracy, or content of either of these signed statements.[4] Instead, he inappropriately relies upon Telonis v. Staley, 104 Utah 537, 144 P.2d 513, 516-19 (1943), to argue that these minor defects in the signed statements invalidate the property tax sale. Telonis does not support this argument; rather, Telonis stands for the proposition that the absence of an auditor's signed statement can invalidate a property tax sale. See Thomas v. Heirs of Braffet, 6 Utah 2d 57, 305 P.2d 507, 509-10 (1956) ("Later cases have never wavered from this [proposition announced in Telonis], and it is now a firmly established rule of law in this jurisdiction that the absence of the auditor's [signed statement] is a fatal defect and would render void a tax sale upon which a tax deed is based." (emphasis added)), overruled on other grounds by First Equity Fed., Inc. v. Philips Dev., LC, 2002 UT 56, 52 P.3d 1137. Therefore, Trunnell's argument fails.

Second, Trunnell argues that Summit County failed to provide adequate notice of the property tax sale, as required by statute. See Utah Code Ann. § 59-2-1351(2)(a)-(c) (2000).[5] This argument is unsupported by the record, which reveals that Summit County complied in all respects with the statutory notice requirements. The plain language of section 59-2-1351(2)(a) required that Summit County's notice of the property tax sale be "sent by certified and first class mail to the last-known recorded owner, the occupant of any improved property, and all other interests of record, as of the preceding March 15, at their last-known address." Id. § 59-2-1351(2)(a). The record shows that Summit County "sent" notices to each of the appropriate parties, including Trunnell, "by certified and first class mail" to "their last-known address."[6] Id. The plain language of section 59-2-1351(2)(b) required that Summit County's notice of the property tax sale be "published four times in a newspaper published and having general circulation in the county, once in each of four successive weeks immediately preceding the date of sale." Id. § 59-2-1351(2)(b). The record shows that Summit County published the notice of the property tax sale "four times" in The Park Record, a newspaper "having general circulation in" Summit County, "once in each of four successive weeks immediately preceding the date of sale."[7] Id.

Summit County complied with all of the statutory provisions concerning property tax sales and, therefore, we conclude that the trial court did not err by ruling that Summit County complied with such provisions.

B. Oral Agreement

Trunnell argues that the trial court erred in its rulings concerning Trunnell's alleged oral agreement with the Auditor. Although Trunnell challenges several of the trial court's alternative or collateral determinations about the

alleged oral agreement, he never adequately challenges its central determination about the agreement, which states: "[E]ven accepting as true [Trunnell]'s allegations of fact as to the content of [the oral] agreement, [Trunnell]'s placing a check in the mail with only a [one-cent] stamp does not constitute 'mailing' and, therefore, . . . [Trunnell] failed to perform his end of the bargain, thereby relieving [Summit] County of any duty to perform." We conclude that this determination is entirely correct and dispositive of all issues raised by Trunnell relating to the alleged oral agreement. Because Trunnell's mailing of a check with inadequate postage did not constitute performance on his part, even if his allegations about the content of the oral agreement are accepted as true, Summit County was under no duty to perform. See Coulter & Smith, Ltd. v. Russell, 966 P.2d 852, 860 (Utah 1998) (stating that if consideration fails because one party fails to perform under a contract, the other party cannot be compelled to perform). Even if we were to agree with Trunnell's arguments regarding the trial court's collateral or alternative determinations about the alleged oral agreement, that would not affect our conclusion that the trial court's ultimate determination about the agreement is correct.[8]

C. The Five-Acre Parcel

Trunnell argues that the trial court erred by determining that a certain five-acre parcel was not a separate parcel. This argument is without merit. As we have previously noted, the record shows that the sale of Trunnell's property was based solely upon property tax delinquency for 1996. The record also shows that for the 1996 tax year, the five-acre parcel had not yet been assigned a separate tax identification number and that all of Trunnell's property was taxed as one parcel. Accordingly, the trial court did not err by determining that

the five-acre parcel was not a separate parcel for purposes of the property tax sale.

Based upon the foregoing, we conclude that the trial court did not err by granting summary judgment in favor of Summit County.

II. Sorensens' Motion For Summary Judgment

Trunnell argues that the trial court erred by granting summary judgment in favor of the Sorensens. All of Trunnell's arguments on this issue are based upon the assumption that he somehow retained an interest in the property after the tax deed was issued to the Sorensens. Because we have concluded that the property tax sale was valid, Trunnell's interest in the property was extinguished upon the issuance of the tax deed. See Hanson v. Burris, 86 Utah 424, 46 P.2d 400, 406 (1935) (stating that purchasers at a tax sale "take with a 'new and complete title in the land, under an independent grant from the sovereign authority, which bars or extinguishes all prior titles and [e]ncumbrances of private persons, and all equities arising out of them'" (citations omitted)), aff'd, 297 U.S. 378, 56 S. Ct. 511 (1936); see also Utah Code Ann. § 59-2-1351.1(9)(a) (2000) (stating that tax deed conveys property to purchaser in "fee simple"). There is nothing in the record to suggest that, after issuance of the tax deed, the Sorensens' actions in relation to the property or Trunnell could be construed as anything but exercises of their rights as property owners. Therefore, Trunnell's arguments on this issue fail and we conclude that the trial court did not err by granting summary judgment in favor of the Sorensens.

We affirm the trial court's order granting Defendants' motions for summary judgment and denying Trunnell's cross-motion for summary judgment.

James Z. Davis, Judge

I CONCUR:

Norman H. Jackson, Judge

I CONCUR IN THE RESULT:

Russell W. Bench,

Associate Presiding Judge

1. The trial court granted summary judgment in favor of Defendants in response to two separate motions. Defendant Summit County filed its motion for summary judgment on claims 1-3 of Trunnell's complaint, and Defendants James and Connie Sorensen (Sorensens) filed their motion for summary judgment on claims 4-8 of Trunnell's complaint. Although the trial court granted both of these motions, it granted each upon different grounds. As such, Trunnell presents separate arguments for each motion on appeal.

2. Trunnell presents several arguments alleging failures by Summit County to comply with the statutory provisions governing property taxes in tax years other than 1996. However, because the sale of Trunnell's property was based

solely upon property tax delinquency for the 1996 tax year, we do not address his arguments based upon tax years other than 1996.

3. The penalty for an assessor's failure to complete an assessment book in a timely manner is governed by Utah Code Annotated section 59-2-314 (2000), which states:

Any assessor who fails to complete and deliver the assessment book to the county auditor within the time prescribed by law . . . shall pay a penalty of $1,000, to be recovered on the assessor's official bond, for the use of the county, or deducted from salary by the county legislative body.

Id. Private citizens do not have the legal right to bring an action to enforce this penalty. See Stromquist v. Cokayne, 646 P.2d 746, 748 (Utah 1982) (holding, under former section, that private party did not have legal right to bring an action to enforce penalty).

4. This position was confirmed by Trunnell's counsel at oral argument.

5. Utah Code Annotated section 59-2-1351(2) (2000) provides:
Notice of the tax sale shall be provided as follows:
(a) sent by certified and first class mail to the last-known recorded owner, the occupant of any improved property, and all other interests of record, as of the preceding March 15, at their last-known address; and
(b) published four times in a newspaper published and having general circulation in the county, once in each of four successive weeks immediately preceding the date of sale; or
(c) if no newspaper is published in the county, posted in five

public places in the county, as determined by the auditor, at least 25 but no more than 30 days prior to the date of sale.

Id. § 59-2-1351(2)(a)-(c).

6. Although Trunnell argues that the notices sent by Summit County are inadequate, he does not demonstrate how the notices are inadequate under the plain language of section 59-2-1351(2)(a). Instead, his argument attempts to add additional requirements to section 59-2-1351(2)(a) or impose additional duties for notice upon Summit County.

7. Trunnell argues that under Home Owners' Loan Corp. v. Stevens, 98 Utah 126, 97 P.2d 744, 745-47 (1940), the requirement of notice by publication "once in each of four successive weeks immediately preceding the date of sale," Utah Code Ann. § 59-2-1351(2)(b), requires notice by publication for twenty-eight days. See Stevens, 97 P.2d at 747 (construing predecessor to section 59-2-1351, which required published notice for four consecutive weeks, to require notice for total number of days in four consecutive weeks, or twenty-eight days). We are unpersuaded by Trunnell's argument.

The Stevens court was required to construe the predecessor to section 59-2-1351 because, although the statute clearly stated the number of publications required for notice by publication, it was ambiguous regarding the required notice period for notice by posting. See Stevens, 97 P.2d at 745-47. As a result of this ambiguity, the Stevens court concluded that the notice period for notice by publication also applied to notice by posting. See id. at 746-47. However, the court observed that because the notice period for notice by publication denoted the number of publications, "once a week for four consecutive weeks," id. at 745 (quotations and citation omitted), it could not be easily applied to notice by posting.

See id. at 746-47. As a result, the court concluded that, in order for the notice period to be applicable to both types of notice, it must be viewed as a reference to duration of notice both in case of publication and of posting, since the statute clearly does not contemplate that a notice be posted four times during the period. Doubtless the legislature might prescribe the number of newspaper publications which would suffice as a prerequisite to holding a sale and duration of time of notice if made by posting, but as used in the section under examination it indicated no such distinction.

Id. at 746.

The language of section 59-2-1351 is different from that of its predecessor, and the distinction described in Stevens is now present in section 59-2-1351. Section 59-2-1351 now clearly "prescribe[s] the number of newspaper publications which . . . suffice as a prerequisite to holding a sale and duration of time of notice if made by posting." Stevens, 97 P.2d at 746; see Utah Code Ann. § 59-2-1351(2)(b)-(c) (stating that notice be published "once in each of four successive weeks immediately preceding the date of sale" or posted "at least 25 but no more than 30 days prior to the date of sale"). As such, the ambiguity that existed in its predecessor no longer exists in section 59-2-1351. Therefore, we conclude that the holding of Stevens is inapplicable to section 59-2-1351.

Accordingly, in determining the required notice period for notice by publication, if any, we look to the plain language of section 59-2-1351(2)(b). See In re Estate of Flake, 2003 UT 17,¶25, 71 P.3d 589 (stating that in statutory construction, we look first to the plain language of a statute and go beyond the plain language only if an ambiguity exists). Section 59-2-1351(2)(b) does not contain a required notice period for notice by publication, but instead requires that the notice be

"published four times . . . , once in each of four successive weeks immediately preceding the date of sale." Utah Code Ann. § 59-2-1351(2)(b).

8. Trunnell also presents a promissory estoppel argument. One of the required elements for a promissory estoppel claim is that the "[promissee] acted with prudence and in reasonable reliance on a promise made by the [promisor]." J.R. Simplot Co. v. Sales King Int'l, Inc., 2000 UT 92,¶29, 17 P.3d 1100 (alterations in original) (emphasis added) (quotations and citations omitted). Although Trunnell may have reasonably relied upon the alleged promise by the Auditor, Trunnell clearly did not act with prudence by attaching only a one-cent stamp when mailing his check to the Auditor. Because this element is not satisfied, Trunnell's promissory estoppel argument fails.

IN THE THIRD DISTRICT COURT IN AND FOR SUMMIT COUNTY, STATE OF UTAH

Paul Trunnell an individual, Plaintiff vs. Summit County; James Sorensen, an individual; and Connie Sorensen, an individual, Defendants.	ORDER ON MOTIONS FOR SUMMARY JUDGMENT AND JUDGMENT Case No. 010500222 Judge Robert K. Hilder

The following motions came for hearing before the Court on Thursday, August 15, 2002, at 9:00a.m., at the Silver Summit Courthouse in Summit County, Utah:

1. **Summit County's Motion for Summary Judgment;**
2. **Defendants James and Connie Sorensen's Motion for Summary Judgment on Claims 4 & 5;**
3. **Defendant James and Connie Sorensen's Motion for Summary Judgment on Claims 6, 7, & 8; and**
4. **Plaintiff's Cross-Motion for Partial Summary Judgment.**

Mr. B. Ray Zoll of Zoll & Tycksen was present representing Plaintiff Paul Trunnell. Ms. Jami Bracklin was present representing Defendant Summit County.

Mr. Joseph E. Wrona and Ms. Victoria C. Fitlow of Wrona, Fitlow, Kozak & Easterly, P.C. were present representing Defendants James and Connie Sorensen.

The Court, having considered the various motions, memoranda in support thereof, opposing memoranda, and reply memoranda, and having heard oral argument for all parties, and good cause appearing therefore, hereby makes and enters the following **ORDER**:

1. The Court finds that there are no disputed issues of material fact. While there appears to be a factual dispute as to the content of a telephone conversation between Plaintiff and Blake Frazier, the Summit County Auditor, the Court finds that any such dispute is not material to this case for reasons set forth below.
2. The Court finds that, as a matter of law, Summit County properly complied with all relevant aspects of the statute governing county tax sales. The Court so finds, giving consideration to the rights of Plaintiff as a property owner, and balancing those rights consistent with justice to others and the public interest in finality concerning property ownership. In so finding, the Court notes that it considered the fact that Summit County did not make any mistakes in connection with the tax sale, nor did the Sorensens, but that Plaintiff's mistakes were legion. Plaintiff's mistakes, weighed against the absence of mistakes by Summit County and the Sorensens, and the public interest in the certainty of tax sales leads this Court to the above conclusion.

3. The Court finds that, as a matter of law, Summit County provided proper statutory notice to Plaintiff, by both mail and publication, of the Summit County Tax Sale of Parcel SS-75, which took place on May 24,2001.
4. The Court finds that there is ample undisputed evidence that everything was done by Summit County that was reasonably calculated to give actual notice to Plaintiff of the tax sale of Parcel SS-75 on May 24, 2001, including certified and first class mail to Plaintiff's last-known record address in Sandpoint, Idaho, which was signed for by Plaintiff's wife; certified and first class mail to Plaintiff's business address, which was signed for by Plaintiff's business partner and the registered agent of Plaintiff's business; and publication in The Park Record once each week for four successive weeks immediately preceding the tax sale.
5. As to the alleged agreement between Blake Frazier and Plaintiff, the Court finds that, even accepting as true Plaintiff's allegations of fact as to the content of that agreement, Plaintiff's placing a check in the mail with only a 1¢ stamp does not constitute "mailing" and, therefore, the Court finds that Plaintiff failed to perform his end of the bargain, thereby relieving the County of an duty to perform. The same failure of performance by Plaintiff makes any argument for estoppel that would take the alleged agreement outside the statute of frauds similarly unavailing. The Court also finds that Plaintiff failed to satisfy a condition precedent, that being delivery of

payment to Summit County, and that Plaintiff's failure excused Summit County from any further performance of an alleged oral agreement.

6. In the alternative, the Court finds that Blake Frazier does not have statutory authority to make an agreement such as that alleged by Plaintiff, absent some partial redemption of the property by Plaintiff by actual receipt of money by Summit County and subsequent ratification by the Summit County Board of County Commissioners.
7. There being no disputed issues of material fact, and the Defendants having shown that they are entitled to judgment as a matter of law for the reasons set forth above and for the reasons articulated by the Court at the hearing of August 15, 2002, the Court hereby grants Summit County's Motion for Summary Judgment, dismissing Claims 1, 2, and 3 of Plaintiff's Complaint and quieting title to the property in James and Connie Sorensen.
8. The Court hereby grants Defendant James and Connie Sorensen's Motion for Summary Judgment on Claims 4 & 5, for the reasons set forth in the Sorensens' Memorandum in Support.
9. The Court hereby grants Defendant James and Connie Sorensen's Motion for Summary Judgment on Claims 6, 7 & 8, for the reasons set forth in the Sorensens' Memorandum in Support.
10. The Court hereby denies Plaintiff's Cross-Motion for Summary Judgment.
11. The Court hereby lifts the conditions imposed in this Court's Order on Motion for Preliminary Injunction.

Furthermore, for the reasons set forth above, the Court hereby makes and enters the following

JUDGMENT:

A. On Plaintiff's First Cause of Action (for Declaratory Judgment):

That Plaintiff should take nothing by his first cause of action and, instead, the Court hereby declares that the Summit County Tax Sale of Parcel SS-75 on May 24, 2001, was valid and enforceable.

B. On Plaintiff's Second Cause of Action (for Quiet Title):

That Plaintiff should take nothing by his second cause of action and, instead, the Court hereby quiets title in the property known as Parcel SS-75 in Defendants James and Connie Sorensen.

C. On Plaintiff's Third Cause of Action (for Breach of Contract):

That Plaintiff should take nothing by his third cause of action.

D. On Plaintiff's Fourth Cause of Action (for Injunctive Relief):

That Plaintiff should take nothing by his fourth cause of action.

E. On Plaintiff's Fifth Cause of Action (for Conversion and Replevin):

That Plaintiff should take nothing by his fifth cause of action.

F. On Plaintiff's Sixth Cause of Action (for Tortious Interference with Contract):

That Plaintiff should take nothing by his sixth cause of action.

G. On Plaintiff's Seventh Cause of Action (for Intentional Interference with Economic Relations):

That Plaintiff should take nothing by his seventh cause of action.

H. On Plaintiff's Eighth Cause of Action (for Forcible Entry):

That Plaintiff should take nothing by his eighth cause of action.

I. On all remaining causes of action:

That no party shall have judgment on any remaining causes of action, the same having been abandoned.

DATED: 13th Sept., 2002
s/ Honorable Robert K. Hilder
Third District Court Judge

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File by DG